IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 24TH AUGUST 2007 / 2ND BHADRA 1929

WP(C).No. 25930 of 2007(J)

PETITIONER:

LESLIE BIVEIRA,
CORPORATE MANAGER, CENTRAL BOARD OF ANGLO
INDIAN EDUCATION, KOCHI, ERNAKULAM.

BY ADV. SRI.ABRAHAM VAKKANAL
SRI.PAUL ABRAHAM VAKKANAL
SRI.BIJIMON C.CHERIAN
SRI.ARUL KUMAR.P
SRI.LOWEL CHERIAN

RESPONDENTS:

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1. THE STATE OF KERALA, REPRESENTED BY
THE SECRETARY, GENERAL EDUCATION DEPARTMENT,
SECRETARIAT.

2. THE DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM.

BY G.P.SRI.A.J.VARGHESE.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Thottathil B. Radhakrishnan, J.

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W.P.(C)No.25930 of 2007

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Dated this the 24th day of August, 2007.

JUDGMENT

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Petitioner is the manager of a corporate educational agency. The short issue is whether the Director of Public Instructions, hereinafter referred to as the "Director", has acted in excess of authority under Rule 7 in Chapter III of the Kerala Education Rules, 1959, for short, the "KER", in issuing the impugned Ext.P7 placing the petitioner under temporary disqualification from managership. That order has been issued without hearing the petitioner. It is stated in Ext.P7 that the said order will be reviewed after finalisation of the vigilance case referred to therein.

2. As required by this Court, the learned Government Pleader has placed a copy of the letter referred

to at Sl.No.2 in Ext.P7. That letter discloses that the Enquiry Commissioner and Special Judge, Thrissur forwarded a complaint for enquiry which resulted in a report being submitted to that court on 8-3-2007, which, in turn, directed on 12-3-2007, to register a case against the writ petitioner and another and to investigate the same. Accordingly, a case VC 3/2007/Ekm. has been registered under the different provisions of the Prevention of Corruption Act, 1988 on 15-3-2007. The writ petitioner is the second accused in that case. It is also stated in that letter that if the accused persons are allowed to continue in their official position, they may interfere with the investigation by inducing witnesses and destroying records and therefore they may be suspended from service at the earliest.

3. The legal issues raised by the petitioner are, firstly, that the authority under Rule 7 of Chapter III KER to

disqualify a manager does not include the power to do so without a pre-decisional hearing and, secondly, that such power does not include the authority to pass an order of suspension of the managership temporarily and no suspension order, as understood in the realm of service law, could be passed against the manager, in terms of the KER or the Kerala Education Act, 1958, hereinfater referred to as the "Act", for short.

4. Rule 7 in Chapter III KER provides for action against manager or educational agency in the event of mismanagement. In terms of that Rule, it shall be open to the Director or the Deputy Director of Education, the "DDE", for short, to declare a manager unfit to hold such office in the event of, among other things, malpractice, corruption or maladministration, gross negligence of duty, and to require the educational agency to appoint another suitable person as manager. A final action in terms of Rule

7(1) can be taken only after giving the manager a reasonable opportunity to show cause against the action proposed to be taken and after due enquiry. The final decision contemplated in Rule 7(1) is thus one that would follow a complete procedure of pre-decisional hearing and enquiry. Such enquiry is excluded in cases where the manager is convicted by a court of law for an offence involving moral turpitude.

5. Malpractice, corruption or maladministration are grounds on which a manager can be declared unfit to hold such office. The power to disqualify a person permanently, includes the power to disqualify for a temporary period. This will only ensure that the person in question does not meddle with the office of the manager during the interregnum. Such a step may have to be necessarily taken at least in some cases. That will not be an action of a punitive nature. It will only be akin to suspension pending a

proposed enquiry following initiation of proceedings to call upon the manager to show cause against the proposed action. The manager of an educational agency which runs an aided school deals with public funds. The State and the statutory authorities cannot, and are not to, stand as mute spectators in situations which require a person to be placed under suspension from the office of managership. Therefore, in the absence of any express exclusion to make an order of suspension from the office of the manager, the power in Rule 7 of Chapter III KER to declare a manager unfit to hold office includes the power to keep a manager under suspension during the enquiry proceedings or even prior to the issuance of show cause notice, depending upon the facts and circumstances of each case. Such a purposive construction of Rule 7 in Chapter III KER is required to further the cause of public justice, in the backdrop of the objects sought to be achieved by such provision, referable to the provisions of KER and the Act. There is, therefore,

sufficient authority with the Director or the DDE to place a manager under suspension and such suspension would be, by itself, non-stigmatic.

6. The impugned Ext.P7 has been issued by the Director stating that the said order is subject to review after finalisation of the vigilance case. He has also stated that the petitioner is being temporarily disqualified, thereby meaning that, it is not an absolute disqualification for all times to come as would normally happen in the event of a final order under Rule 7 of Chapter III KER. It clearly shows that the impugned order, by itself, is not a final order under Rule 7 of Chapter III KER and that it is without any stigma attached to it. Such an order of suspension, obviously, entitles the educational agency to appoint any other suitable person during the interregnum to be the manager, subject to the approval of the statutory authorities and without stigmatising the manager who is placed under

suspension.

7. However, on the facts and in the circumstances of the case, especially when the petitioner has certain materials to be placed, it is appropriate that the Director hears the petitioner to consider the issue as to whether the order of temporary disqualification imposed as per Ext.P7 is to continue till the finalisation of the vigilance case or whether the temporary disqualification could be taken away. To aid such a decision making process, it is directed that Ext.P7 would be taken as a notice to which the petitioner may show cause, if any, against disqualification. He would also be entitled to request the Director for copies of materials which are referred to in Ext.P7 against him. If such objections are placed on record, the Director will hear the petitioner at the earliest point of time and take a final decision on such cause being shown by the petitioner.

With the aforesaid directions, this writ petition is disposed of. It is clarified that though Ext.P7 is ordered to be treated as a notice, the effect of that order will continue till a contrary decision, if any, is taken by the Director.

Thottathil B.Radhakrishnan,
Judge.

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